

Application No. 10/700,761
Amendment Dated January 20, 2006
Response to Office Action Dated July 20, 2005

REMARKS

In the Office Action dated July 20, 2005, claims 1-66 were pending with the result that claims 1-11 were rejected and claims 12-66 were withdrawn from further consideration. The Office Action is a non-final action. In response, Applicant has rewritten claim 1, and canceled claims 12-66. In view of the above amendments and following remarks, reconsideration of this application is requested.

In the Office Action, the Examiner subjected original claims 1-66 to an election/restriction requirement stating that there were four different groups of inventions claimed. In response, Applicant provisionally elected via a telephone interview with the Examiner to prosecute the invention of Group I, namely, claims 1-11. Applicant herein affirms this election, and accordingly has canceled claims 12-66. Applicant reserves its right to file a divisional application on any of these non-elected claims in the future.

In the Office Action, claims 1-11 were rejected under 35 USC §102(b) as being anticipated by or, in the alternative, under 35 USC §103(a) as obvious over Carroll et al U.S. Patent Application 2002/0019187. Claims 1-11 were also rejected as being anticipated by, or in the alternative, obvious over Gardner et al U.S. Patent Application 2002/0071944. Finally, claims 1-11 were rejected under 35 USC §102(e) as anticipated by or, in the alternative, under 35 USC §103(a) as obvious over Mathis et al U.S. Patent Application 2004/0224596. Each of the rejections of claims 1-11 based upon these references were substantially identical in the Office Action, and Applicant believes all three rejections can be dealt with in the same manner. Accordingly, the following comments apply equally to each rejection and each reference.

The Examiner will note that claim 1 has been amended to call for the cling film layer to have an "inner surface" and an "outer autoadhesive surface." The inner surface is bonded to the base layer as, for example, illustrated in Fig. 1A to form the claimed laminate. In addition, claim 1 has been amended to further clarify the peel strength and shear strength limitations. The peel strength and shear strength referred to in claim 1 is that developed between a cling film to cling film interface, and not the peel strength

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between the cling film and base layer. Thus, Applicant has amended claim 1 to state that when the outer autoadhesive surface of the cling film layer is engaged with another cling film autoadhesive surface to form a cling-to cling interface, the cling-to-cling interface provides a peel strength of 1,000 g per inch or less and a shear strength greater than 4 hours.

Support for the above amendments to claim 1 can be found in the specification as filed. More specifically, Applicant refers the Examiner to paragraphs [0040], [0045] and [0046] with regard to the "autoadhesive surface" of the cling film layer. With regard to the "cling-to-cling interface" Applicant refers the Examiner to paragraph [0049] on page 13 of the specification. Finally, Applicant refers the Examiner to paragraph [0043] for definitions of the "low peel" strength and the "high shear" strength referred to in claim 1. Thus, Applicant believes no new matter has been added to claim 1.

Each of Carroll et al, Mathis et al and Gardner et al teach breathable laminates. These breathable laminates are made by bonding a substrate such as a non-woven to some kind of breathable layer. Bonding of these two layers can be done by pressure, adhesives, ultrasonics, etc. However, the peel and shear strengths referred to in each reference is the peel and shear strengths between these two layers. The peel and shear strengths is not that of the outer surface, such as what Applicant is claiming. The peel and shear strengths referred to in Carroll et al, Mathis et al and Gardner et al are thus totally different than the peel and shear strengths referred to and claimed by Applicant for a cling film-to-cling film interface. Although Applicant is bonding a non-woven to a cling film layer to form a cling film laminate, the peel strength defined in claim 1 is between cling-to-cling autoadhesive surfaces and not the bond between the film layer and the non-woven substrate.

Applicant thus believes claim 1 is clearly distinguishable over Carroll et al, Mathis et al and/or Gardner et al. Applicant requests the Examiner withdraw the §102 and §103 rejections of claims 1-11 based on these three references.

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In the Office Action, claims 1-11 were rejected under the judicially created Doctrine of Obviousness Type Double Patenting as being unpatentable over claims 21-34 of copending Application No. 10/981,046. In addition, claims 1-11 were provisionally rejected under the Doctrine of Obviousness Type Double Patenting as being unpatentable over claims 21-34 of copending Application No. 10/867,438. In response, Applicant notes that it will file a Terminal Disclaimer to overcome these rejections when necessary. However, Applicant believes the filing of a Terminal Disclaimer at this point in time is premature. Therefore, Applicant requests the Examiner hold these two rejections in abeyance pending the patenting of the conflicting claims.

In the Office Action, claims 1-11 were also rejected under the Doctrine of Obviousness Type Double Patenting as being unpatentable over claims 1-7 of U.S. 6,475,932. Applicant, however, respectfully traverses this rejection.

The '932 patent claims a multi-layer laminated structure having a first breathable layer, a second breathable layer and an elastomeric web layer having a plurality of openings therein disposed between the two breathable layers. The elastomeric web layer is preferably an elastomeric mesh such as that shown in Fig. 1 of the '932 patent. The elastomeric mesh is also preferably stretchable longitudinally and laterally with the result that the laminate being made is usable as an elastic panel in products such as diapers, incontinence products, bandages, body wraps and the like. See column 5, lines 28-43 in the '932 patent. The Examiner should further refer to Fig. 2A wherein the tri-laminate structure is in its stretched state. The end product is a tri-laminate that may be stretched, i.e. is elastomeric.

In contrast, the Examiner will see that claim 1 specifically requires a base layer comprised of a flexible "substantially non-stretchable" substrate. Applicant has defined "substantially non-stretchable" as being less than about 50% from its original non-stretched configuration (see claim 9), preferably no more than 25% from its original non-stretched configuration, and most preferably less than 10% from its original non-stretched configuration. Applicant refers the Examiner to the last half of paragraph [0037] on page

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8 of the application as filed. Thus, while the '932 patent desires an elastomeric tri-laminate structure that is capable of being substantially stretched from its initial non-stretched position, Applicant is herein claiming a substantially non-stretchable laminate. Thus, Applicant believes the Examiner should withdraw the obviousness type double patenting rejection based upon the '932 patent.

An effort has been made to place this application in condition for allowance and such action is earnestly requested.

Respectfully submitted,

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